



COUNTY OF LOS ANGELES

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March 25, 2003

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF THE
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
INTERDEPARTMENTAL MEMORANDUMS OF UNDERSTANDING (MOU) FOR
LOS ANGELES COUNTY AS A COVERED HYBRID ENTITY
(3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Formally establish an Interdepartmental Memorandum of Understanding (MOU) process and related Administrative Dispute Resolution Process (ADRP) for certain County Departments, to permit them to receive and use "Protected Health Information" (PHI) from the covered health care components of the County, and to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and its implementing regulations.
2. Approve the MOU language (substantially similar to Attachment A) for all affected Departments that require the disclosure of PHI, for non-treatment purposes, for continuation of their operations, and direct the affected Departments to enter into the MOU and to comply with its terms.
3. Adopt and establish the ADRP (Attachment 1 of the MOU) to provide for the resolution of disputes between departments and the enforcement of the MOUs, as required by HIPAA.

4. Delegate authority to the Departmental Directors to prepare, sign and execute the MOUs, substantially similar to the format of Attachment A.
5. Delegate authority to the Departmental Directors, subject to prior advice and consent of County Counsel and Chief Information Privacy Officer (CIPO), to make all necessary alterations and adjustments to the MOUs to bring them into compliance with changes in HIPAA laws and regulations.

PURPOSE OF RECOMMENDED ACTION

Your Board has already undertaken significant steps to establish the administrative framework for HIPAA compliance, most recently by the adoption of a Board Letter on January 7, 2003, designating the County as a "hybrid entity" under HIPAA. As a result of this action, the Department of Health Services (DHS), the Department of Mental Health (DMH), and the Kirby Center Program of the Probation Department have been designated as the covered components of the County. As such, they are allowed to disclose PHI only in accordance with the HIPAA Privacy Rule.

With respect to certain departments, the covered components are permitted to use and disclose PHI as "required by law," for treatment or related purposes to certain departments without the need of a formal MOU. However, for departments that require PHI to carry out other functions, on the behalf of the covered components, no such express provisions exist. In such cases, HIPAA allows the disclosure of PHI only if there is a "legally enforceable" MOU between the departments. This Board Letter establishes the legally required MOU process.

JUSTIFICATION

HIPAA is a federal regulation. The law includes provisions to protect the privacy of consumers by adopting strict privacy rules for health information. The deadline for the HIPAA Privacy provisions for the Interdepartmental MOUs is April 14, 2003. The Board approval of the proposed HIPAA language will ensure that affected Departments are aware of their specific obligations to comply with HIPAA and that they will be held responsible for their failure to comply with Interdepartmental MOU provisions. Attachment 1 will establish a dispute resolution process for this purpose. There are four levels for the resolution of interdepartmental disputes:

1. The first level being an interdepartmental resolution process between the respective Department Heads;
2. If a dispute is not resolved at that level, it would be forwarded to the Chief Information Privacy Officer for resolution.
3. If it is not resolved at the satisfaction of the departments and the Chief Information Privacy Officer, the matter would be submitted to the CAO for resolution. If the CAO is an involved party, County Counsel would facilitate the resolution process.
4. If neither the CAO nor County Counsel are able to satisfactorily resolve the dispute, the issue would be submitted to your Board for final determination.

FISCAL IMPACT/FINANCING

The proposed recommendations do not have a direct material cost for the County. However, HIPAA's cost implications to implement the required administration, training, security and information systems enhancement will be substantial for each affected covered Department. The financial impact on the affected non-covered departments is expected to be minimal.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

HIPAA is a federal law that requires County conformance to certain rules in the areas of privacy, security and electronic data interchange (EDI). Failure to comply would leave the County open to federal sanctions for non-compliance and potentially unable to provide health care related services or to submit health care related claims for reimbursement. In particular, HIPAA requires Interdepartmental MOU language when PHI disclosure to other departments is required for business purposes, which are not treatment related and where the non-covered departments are required to act on behalf of the covered Departments.

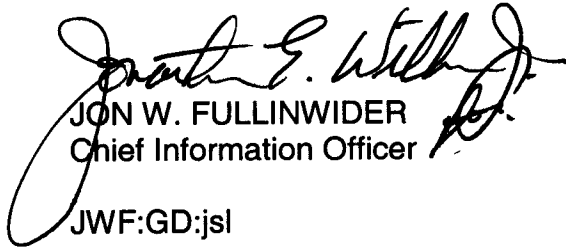
CONCLUSION

By approving the recommended Interdepartmental MOUs and by authorizing the affected Departments to sign and execute these agreements, the County will achieve another critical milestone towards HIPAA compliance. Additionally, the administrative

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procedures will also provide guidance and procedures for managing HIPAA-related health privacy issues between the County's covered and non-covered departments.

Respectfully submitted,



JON W. FULLINWIDER
Chief Information Officer

JWF:GD:jsl

Attachments (2)

c: Executive Officer, Board of Supervisors
County Counsel
Information Systems Commission
Department of Health Services
Department of Mental Health
Dorothy Kirby Center of the Department of Probation
Probation Department
Chief Administrative Office

ATTACHMENT A

INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING REGARDING HIPAA AND THE DISCLOSURE OF PROTECTED HEALTH INFORMATION FROM THE COVERED COMPONENT TO CERTAIN OTHER DEPARTMENTS OF THE COUNTY OF LOS ANGELES

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to set forth the obligations of certain Departments of Los Angeles County (MOU Departments) with respect to their receipt of Protected Health Information from the covered components of the County, pursuant to the Health Insurance Accountability and Portability Act (HIPAA) of 1996, and its implementing regulations. Under HIPAA, the covered components cannot disclose Protected Health Information to the MOU Departments in question without a MOU, unless it is for treatment purposes.

II. HIPAA Covered Component Departments

Department of Health Services (DHS), Department of Mental Health (DMH), and the Dorothy Kirby Center of the Probation Department (Kirby).

III. MOU Departments

Chief Administrative Office (CAO), Auditor-Controller (AC), Treasurer-Tax Collector (TTC), Internal Services Department (ISD), and County Counsel.

IV. Enforcement of the MOU

This MOU will be effective upon execution by both parties, which includes the administrative procedures for its enforcement. The Departments are expected to safeguard Protected Health Information using reasonable measures. Privacy and security issues that cannot be resolved between the affected departments and to the satisfaction of the County's Chief Information Privacy Officer (CIPO), the CAO or County Counsel will require resolution by the Board of Supervisors, in accordance with the Administrative Dispute Resolution Process (ADRP) (Attachment 1).

Terms and Conditions of the HIPAA MOU

Under this MOU, the MOU Departments provide services to County (also Covered Entity) and receive, have access to, or create Protected Health Information in order to fulfill its obligations in providing those services. The Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Parts 160 and 164 ("Privacy Regulations");

The Privacy Regulations require the Covered Entity have this MOU between its covered components and the MOU Departments in order to mandate certain protections for the privacy and security of Protected Health Information, and those regulations prohibit the disclosure to the MOU Departments of Protected Health Information if such a MOU is not in place;

Therefore, the Covered Component and MOU Departments agree as follows:

DEFINITIONS

- 1.1 “Use” or “Uses” mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such information within a MOU Department’s internal operations.
- 1.2 “Disclose” and “Disclosure” mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside a MOU Department’s internal operations or to other than its employees.
- 1.3 “Individual” means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.4 “Protected Health Information” has the same meaning as the term “protected health information” in 45 C.F.R. § 164.501, limited to the information created or received by a MOU Department from or on behalf of a Covered Component Department. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identified the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by a MOU Department from or on behalf of a Covered Component Department, or is created by a MOU Department, or is made accessible to a MOU Department by a Health Care Component Department.
- 1.5 “Required By Law” means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.

IDENTIFIED Protected Health Information DISCLOSURES

2.1 {Covered Department} discloses Protected Health Information to {MOU Department} for the following purposes:

- (a) {Purpose 1}
 - (i) {Covered Department} understands that {MOU Department} will further disclose this Protected Health Information to the following persons or organizations:
 - a. {Person/Organization 1}
 - b. {Person/Organization 2}
 - c. {Person/Organization 3}...
- (b) {Purpose 2}
 - (i) {Covered Department} understands that {MOU Department} will further disclose this Protected Health Information to the following persons or organizations:
 - a. {Person/Organization 1}
 - b. {Person/Organization 2}
 - c. {Person/Organization 3}...
- (c) {Purpose 3}...

OBLIGATIONS OF MOU DEPARTMENTS

3.1 Permitted Uses and Disclosures of Protected Health Information. A MOU Department:

- (a) Shall Use and Disclose Protected Health Information as necessary to perform its obligations to the Covered Entity, the covered components or a department thereof;
- (b) Shall Disclose Protected Health Information to the Covered Entity or the covered component Departments upon request;
- (c) May, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:
 - (i) Use protected Health Information; and
 - (ii) Disclose Protected Health Information if the Disclosure is Required by Law.

(d) A MOU Department shall not Use or Disclose Protected Health Information for any other purpose.

3.2 Adequate Safeguards for Protected Health Information. Each MOU Department warrants that it shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this MOU. Each MOU Department agrees to limit the Use and Disclosure of Protected Health Information to the **minimum necessary** in accordance with the Privacy Regulation's minimum necessary standard.

3.3 Reporting Non-Permitted Use or Disclosure. Each MOU Department shall report to the appropriate covered component Department(s) each Use or Disclosure that is made by the MOU Department, its employees, representatives, agents, contractors or subcontractors but is not specifically permitted by this Agreement. The initial report shall be made by telephone call to [the covered Departmental Privacy Officer], telephone number _____ within forty-eight (48) hours from the time the MOU Department becomes aware of the non-permitted Use or Disclosure, followed by a full written report no later than ten (10) business days from the date the MOU Department becomes aware of the non-permitted Use or Disclosure to the Chief Information Privacy Officer at:

Chief Information Privacy Officer
Kenneth Hahn Hall of Administration
500 West Temple ST
Suite 493
Los Angeles, CA 90012
(213) 974-2164
cipo@cio.co.la.ca.us

3.4 Mitigation of Harmful Effect. Each MOU Department agrees to mitigate, to the extent practicable, any harmful effect that is known to it of a Use or Disclosure of Protected Health Information by it in violation of the requirements of this MOU.

3.5 Access to Protected Health Information. Each MOU Department shall, to the extent the Covered Entity or a Covered Component Department determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make the Protected Health Information specified available to the Individual(s) identified by the Covered Entity or the Covered Component Department as being entitled to access and copy that Protected Health Information. Each MOU Department shall provide such access for inspection of that Protected Health Information within two (2) business days after receipt of request from the Covered Entity or the Covered Component Department, and shall provide copies of that Protected Health Information within five (5) business days after receipt of the request.

3.6 Amendment of Protected Health Information. Each MOU Department shall, to the extent the Covered Entity or a the Covered Component Department determines that any Protected Health Information constitutes a "designated record set" as defined by 45

C.F.R. § 164.501, make any amendments to Protected Health Information that are requested by the Covered Entity or a Covered Component Department. The MOU Department shall make such amendment within ten (10) business days after receipt of the request in order for the Covered Entity to meet the requirements under 45 C.F.R. § 164.526.

3.7 Accounting of Disclosures.

- a. Upon the Covered Entity's request, MOU Department shall provide to the Covered Entity an accounting of each disclosure of Protected Health Information made by its employees, agents, representatives, contractors or subcontractors. However, MOU Departments are not required to provide an accounting of Disclosures that are necessary to perform the Services because such Disclosures are for either payment or health care operations purposes, or both.
- b. Any accounting provided by the MOU Department under this shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting, the MOU Department shall document the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure. MOU Departments shall provide to the covered components, within ten (10) business days after receipt of request from the covered components, information collected in accordance with this Section 2.8 to permit the covered components to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

3.8 Use of Contractor, Subcontractors and Agents. Each MOU Department shall require each of its agents, contractors and subcontractors that receive Protected Health Information from it, or create Protected Health Information for it, to execute a written agreement obligating the agent, contractor or subcontractor to comply with all the terms of this MOU.

3.9 Training. Each MOU Department shall ensure that all personnel that have access to Protected Health Information shall complete the requisite training curriculum, "HIPAA for MOU Departments."

3.10 Amendment. The parties to this MOU may amend its terms from time to time, as may be necessary to conform to law or to clarify their obligations, as long as the written changes are approved by the County Counsel and the CIPO.

AGREED, Effective as of {Date}:

Department Head
MOU Department:

Department

Department Head
Covered Component Department:

Department

Attachment 1

Administrative Procedures to Implement MOU Between Covered Component and Departments or Offices Receiving Protected Health Information

**Purpose of MOU: To Govern the Exchange of Protected Health Information (PHI)
Between the County's HIPAA Covered Component and Other Departments**

**Purpose of These Administrative Procedures: To Provide an Enforcement
Mechanism Related to the MOU Process, To Deal with Disputes Between County
Departments or Offices Regarding the MOU**

1. The Board of Supervisors will adopt the MOU itself and these administrative procedures for its enforcement.
2. The County's Covered Component is comprised of the Departments of Health Services (DHS), Mental Health (DMH), and the Dorothy Kirby Center of the Probation Department
3. The Covered Component will provide "protected health information" (PHI) to other County departments only in accordance with the MOU.
4. The purpose of these administrative procedures is to set forth the process whereby the MOU will be enforced within the County.
5. In the event the Covered Component, or any department thereof, believes that the terms of the MOU have been or will be violated by any recipient of PHI in another department, the Covered Component or department thereof shall file with the County's Chief Information Privacy Officer ("Privacy Officer") a written complaint. The Privacy Officer will investigate the complaint and will be authorized to work with the affected departments to develop a mutually satisfactory resolution of the complaint.
6. In the event a department believes the Covered Component, or a department thereof, is not complying with the terms of the MOU, a complaint may be filed with the Privacy Officer, as set forth at point 5, above.
7. If the Privacy Officer and the affected departments are not able to resolve their differences to their mutual satisfaction, the matter will be referred to the Chief Administrative Officer (CAO), or his/her designee for resolution. The Privacy Officer will provide his/her findings and recommendations to the CAO before resolution of the matter. In the event the dispute involves the CAO, the matter shall be referred to the County Counsel, or his/her designee for resolution. A resolution by the CAO (or County Counsel) which is satisfactory to the affected departments shall be a final resolution of the matter.

8. In the event the matter is not resolved to the satisfaction of the affected departments and the CAO (or County Counsel), the matter shall be referred to the Board of Supervisors, in its capacity as the final authority of the County of Los Angeles. The affected departments, the CAO, and the Privacy Officer shall provide the Board their respective positions in writing before the Board's determination of the matter.
9. In the event the Board determines that a department has violated the terms of the MOU, it may, in its determination, take or recommend appropriate administrative action. The Board's determination regarding obligations under the MOU shall be final.